

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

**Charles Wynn**

04-A-1964

Five Points Correctional Facility

Caller Box 119

Romulus, NY 14541

Petitioner.

– against –

John B. Lempke,

Respondent.

RICHARD J. SULLIVAN, District Judge:

Upon the petition for issuance of a writ of habeas corpus pursuant to 28 U.S.C. 2254, a copy of which is annexed, it is hereby ORDERED that:

Respondents shall show cause why a writ of habeas corpus should not be issued.

The Clerk of the Court shall serve a copy of this Order, the underlying petition, and supporting documents, if any, contained in the Clerk's file by certified mail, upon the Attorney General of the State of New York, Andrew Cuomo, Law Department, 120 Broadway, New York, NY 10271 and Robert Morgenthau, District Attorney of New York County, 1 Hogan Place, New York, NY 10280 and shall also mail a copy of this Order to the petitioner. Respondent shall file an answer or motion and a notice of appearance herein within sixty (60) days from the date of this Order. Transcripts of all relevant proceedings, the briefs submitted on appeal, and the record in any state post-conviction proceedings shall be submitted.

IT IS FURTHER ORDERED that petitioner shall have thirty (30) days from the date on which he is served with respondent's answer to file a response. The petition will be considered fully submitted as of that date.

**SO ORDERED.**



Richard J. Sullivan,  
U.S.D.J.

Dated: New York, New York

May 15, 2008

**JUDGE SULLIVAN**

PETITION UNDER 28 USC § 2254 FOR WRIT OF  
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

**08 CV 3894**

**United States District Court for the Southern District of New York**

Name	Prisoner Identification No.
<b>CHARLES WYNN</b>	<b>04A1964</b>

Place of Confinement

**FIVE POINTS CORRECTIONAL FACILITY**

Name of Petitioner (include name under which convicted)	Name of Respondent (warden or superintendent of your prison)
<b>CHARLES WYNN</b>	<b>v.</b>
	<b>JOHN B. LEMPKE</b>

**PETITION**

1. Name and location of court which entered the judgment of conviction under attack SUPREME COURT

NEW YORK COUNTY

2. Name and address of lawyer who represented you BRIAN D. PERSKIN, ATTORNEY FOR DEFENDANT

205 MONTAGUE STREET, SUITE 400, BROOKLYN, NEW YORK

3. Date of judgment of conviction MARCH 30TH, 2004

4. Length of sentence 35 YEARS (AGGREGATE)

5. Nature of offense involved (all counts) SEE EXHIBIT A, PAGE 1 (APPELLATE BRIEF)

6. What was your plea? (Check one)

- (a) Not guilty
- (b) Guilty
- (c) Nolo contendere

If you entered a guilty plea to one count of indictment, and not a guilty plea to another count of indictment, give details:

N/A

7. If you pleaded not guilty, what kind of trial did you have? (Check one)

7. If you pleaded not guilty, what kind of trial did you have? (Check one)

- (a) Jury
- (b) Judge only

8. Did you testify at the trial?

Yes  No

9. Did you appeal from the judgment of conviction?

Yes  No

10. If you did appeal, answer the following:

(a) Name of court **APPELLATE DIVISION: FIRST DEPARTMENT**

(b) Name and address of lawyer who represented you

**STEVEN BANKS - THE LEGAL AID SOCIETY - 199 WATER STREET, NYC, NY 10038**

(c) Result **AFFIRMED** —

(d) Date of result and citation, if known **12/16/06 - 35 A.D.3D 283**

(e) Grounds raised **SEE EXHIBIT A, PAGE 2**

(f) If you sought further review of the decision by appeal to a higher state court, please answer the following:

(1) Name of court **COURT OF APPEALS**

(2) Name and address of lawyer who represented you **STEVEN BANKS - 199 WATER STREET**

(3) Result **LEAVE DENIED**

(4) Date of result and citation, if known **MARCH 13, 2007 - 8 N.Y.3D 928**

(5) Grounds raised **SEE EXHIBIT C**

(g) If you filed a petition for Writ of Certiorari in the United States Supreme Court, please provide the date the petition was filed and the date of result and citation, if known

**N/A**

(1) Name and address of lawyer who represented you **N/A**

11. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?

Yes  No

12. If your answer to 11 was "yes," give the following information:

(a) (1) Name of court \_\_\_\_\_

(2) Name and address of lawyer who represented you \_\_\_\_\_

(3) Nature of proceeding \_\_\_\_\_

(3) Grounds raised \_\_\_\_\_

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes  No

(5) Date motion was filed with the Court \_\_\_\_\_

(6) Date and result of motion \_\_\_\_\_

(b) As to any second petition, application or motion give the same information:

(1) Name of court \_\_\_\_\_

(2) Name and address of lawyer who represented you \_\_\_\_\_

(3) Nature of proceeding \_\_\_\_\_

(4) Grounds raised \_\_\_\_\_

(5) Did you receive an evidentiary hearing on your petition, application or motion?

Yes  No

(6) Date motion was filed with the Court \_\_\_\_\_ *N/A*

(7) Date and result of motion \_\_\_\_\_ *N/A*

(c) Did you appeal to the highest state court having jurisdiction the decision on any petition, application or motion?

(1) First petition, etc. Yes  No   
(2) Second petition, etc. Yes  No

(d) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

A hand-drawn graph on lined paper. It features two intersecting lines: a downward-sloping line and an upward-sloping line. The intersection point is labeled 'N/A'.

13. STATE EVERY GROUND ON WHICH YOU CLAIM THAT YOU ARE BEING HELD UNLAWFULLY . EACH GROUND SHOULD BE SET FORTH UNDER A SEPARATELY NUMBERED PARAGRAPH . IF YOU ARE RAISING THE SAME GROUNDS THAT YOU RAISED ON DIRECT APPEAL , YOU SHOULD ATTACH A COPY OF YOUR STATE COURT APPELLATE BRIEF OR ITS TABLE OF CONTENTS . YOU MUST EXHAUST YOUR STATE COURT REMEDIES ON EACH GROUND YOU ARE CLAIMING YOU ARE BEING HELD UNLAWFULLY.

**Ground(s):**

SEE ATTACHMENT

(attach additional papers as necessary)

14. **TIMELINESS OF PETITION:** If your judgment of conviction was made final over one-year ago, you must set forth below why the one-year statute of limitations as codified in 28 U.S.C. § 2244(d) does not bar your petition.\*

**N/A**

\* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as codified in 28 U.S.C. § 2244(d) provides in part that:

- (1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of --
- (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
  - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
  - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court and made

retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

15. Do you have a petition or appeal now pending in any court, either state or federal, as to the judgment under attack?

Yes  No

(a) If so, give the name and location of court in which the petition or appeal is pending \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

16. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes  No

(a) If so, give name and location of court which imposed sentence to be served in the future: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(b) Give date and length of the above sentence: N/A

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

I declare under penalty of perjury that the foregoing is true and correct. Executed on

March 25<sup>th</sup>, 2008

(date)

Sworn to before me this

25 day of March, 2008

Ron P. Colton

Ron P. Colton  
Notary Public, State of New York  
Commissioner of Correctional Services

Commission Expires Nov. 9 2004

Charles W. Jr.

Signature of Petitioner

04A1964

Inmate Number

Box 119  
Rensselaer, NY 14541

Address

I declare under penalty of perjury that on March 25, 2008, I delivered this petition to prison authorities to be  
(date)

mailed to the United States District Court for the Southern District of New York.

Charles W. Jr.

Signature of Petitioner